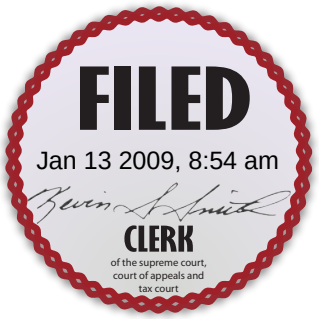

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IN THE
COURT OF APPEALS OF INDIANA

ROBERT V. ANDERSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0806-CR-322
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0611-FA-64

January 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Robert V. Anderson pleaded guilty to four counts of class C felony Child Molesting.[1] The trial court sentenced him to an aggregate sentence of fourteen years in prison. On appeal, Anderson presents the following restated issue for review: Did the trial court abuse its discretion by failing to find his lack of criminal history to be a mitigating circumstance?

We affirm.

Between November 26, 2001 and December 2, 2005, T.C., M.B., A.B., and C.B. (the children) lived with their mother and her longtime boyfriend, Anderson, whom they considered to be their step-father.[2] Over these four years, Anderson molested each of the children. Though there were many alleged abuses, Anderson pleaded guilty to four instances. Specifically, Anderson had T.C., a twelve- or thirteen-year-old boy at the time, touch Anderson's penis in exchange for marijuana. Anderson touched twelve- or thirteen-year-old M.B.'s vagina over and under her clothing. Anderson had twelve-year-old A.B., a female, touch his clothing-covered penis on three different occasions in his bedroom. Finally, Anderson touched thirteen-year-old C.B. on C.B.'s penis and buttocks. About four months after the children were removed from the home for other reasons by the Lake County Department of Child Services, the children reported the sexual abuses they had suffered at the hands of Anderson.

Thereafter, on November 18, 2006, Anderson was charged with two counts of class A felony child molesting, one count of class B felony sexual misconduct with a minor, four

[1] Ind. Code Ann. § 35-42-4-3 (West, PREMISE through 2008 2nd Regular Sess.).
[2] Their mother also had a subsequent child with Anderson.

counts of class C felony child molesting, and one count of class C felony sexual misconduct with a minor. On April 9, 2008, Anderson pleaded guilty to the four counts of class C felony child molesting in exchange for dismissal of the remaining charges. The plea agreement left sentencing open except it mandated that Counts IV and V would be served concurrently with each other, Counts VII and VIII would be served concurrently with each other, and the concurrent sentences imposed in Counts IV and V would be served consecutively to the concurrent sentences imposed in Counts VII and VIII. At the sentencing hearing on May 21, 2008, the trial court imposed sentences of seven years on each count, resulting in an aggregate term of fourteen years in prison.

Anderson appeals his sentence. Specifically, he argues that the trial court abused its discretion by failing to find as a mitigating circumstance "his absence of prior criminal convictions and his *de minimis* contact with the law over the course of his life of forty-seven (47) years." *Appellant's Brief* at 3.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. The trial court must enter a sentencing statement that includes the court's reasons for the imposition of the particular sentence. *Id*. If the statement includes a finding of aggravating and/or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances. *Id*. An abuse of discretion occurs if the trial court overlooks mitigating circumstances that are clearly supported by the record and advanced by the defendant for consideration. *See id.*

The trial court, however, is not obligated to credit mitigating circumstances the same as the defendant or explain why it has chosen to reject certain factors as mitigating. *Rousch v. State*, 875 N.E.2d 801 (Ind. Ct. App. 2007). To demonstrate an abuse of discretion, the defendant must show the court failed to find a mitigating circumstance that is both significant and clearly supported by the record. *Felder v. State*, 870 N.E.2d 554 (Ind. Ct. App. 2007).

Ind. Code Ann. § 35-38-1-7.1(b)(6) (West, PREMISE through 2008 2nd Regular Sess.) provides that a trial court may consider as a mitigating circumstance that the defendant has no history of delinquency or criminal activity or has led a law-abiding life for a substantial period before commission of the crime. *See also Marlett v. State*, 878 N.E.2d 860 (Ind. Ct. App. 2007) (lack of criminal history is generally recognized as a substantial mitigating factor), *trans. denied*.

The presentence investigation report indicates that Anderson has prior arrests for disorderly conduct (1981), operating while intoxicated (1990), and battery (1990), all misdemeanors. Further, while not entirely clear, it appears that he was convicted in one cause of the latter two charges. This prior criminal history aside, Anderson's repeated abuse of the victims over a period of more than four years reveals that he has led less than a law-abiding life for a substantial period of time. In other words, this is not an instance were Anderson committed one criminal act after years of criminal inactivity. Rather, he preyed on his four young victims (and provided them with drugs) for several years. Under these circumstances, the trial court did not abuse its discretion by failing to find this proffered mitigating circumstance. Moreover, even if the trial court had considered this to be a

mitigating circumstance, we are confident it would have imposed the same sentence. *See Anglemyer v. State*, 868 N.E.2d 482 (even if an abuse of discretion is found, remand for resentencing is unnecessary if we can say with confidence that the trial court would have imposed the same sentence had it properly considered the overlooked mitigator).

Judgment affirmed.

MAY, J., and BRADFORD, J., concur